IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION No 484 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

CENTRAL BUREAU OF INVESTIGATION
VERSUS
STATE OF GUJARAT

Appearance:
MR AMIT J SHAH for Petitioner
PUBLIC PROSECUTOR for Respondent No.1
NOTICE SERVED for Respondent No.2.

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 13/03/2001

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. Central Bureau of Investigation through the Superintendent of Police, Gandhinagar, by this petition under Article 227 of the Constitution is challenging the order of Judicial Magistrate First Class, Dholka dated 3-5-1999 in Inquiry Case No.85 of 1999. Under this order, the complaint filed by the respondent No.2 was ordered to be registered and the matter was sent for investigation in exercise of its power under section 156 (3) of Cr.P.C., 1973 to the Central Bureau of Investigation, Branch Ahmedabad.

#. Manifold contentions have been raised by the learned counsel for the petitioner in this petition. One of the contentions raised is that the J.M.F.C., Dholka has no jurisdiction to direct the CBI to make investigation in this matter under section 156 (3) of Cr.P.C., 1973. The Judicial Magistrate though has power to send a private complaint for investigation to police but this power can only be exercised to give direction for investigation to the local police but not to the Central Bureau of Investigation constituted under the Delhi Special Police Establishment Act, 1946.

#. In view of the order, which I propose to pass in this special criminal application, it is not necessary nor desirable to make reference to all those contentions raised by the learned counsel for the petitioners and to give decision thereon.

#. It is true, at the stage when criminal complaint is registered and considering it to be a fit case to send it for investigation by the police in exercise of its power as conferred upon him under section 156 (3) of Cr.P.C. 1973, the accused or the police is not required to be given any notice or opportunity of hearing. At this stage, the Court has ample powers to order for investigation to be made on private criminal complaint by police and which is clearly borne out from the provisions as contained in subsection (3) of section 156 Cr.P.C., 1973. In view of this position of law, at the stage when the impugned order has been passed by the Judicial Magistrate, the petitioner was not required to be given notice or an opportunity of hearing. However, the petitioner challenges this order before this Court in this petition inter-alia on the ground that the Judicial Magistrate lacks jurisdiction in this matter to give direction for investigation to be made in the matter by the CBI and in appropriate case, the Court may permit the litigant to directly come before this Court under its extraordinary jurisdiction though in all the

cases this course may not be permitted. Here, is the CBI before this Court and it should have instead of filing this petition, could have approached to the Magistrate first by filing an application drawing his attention on the question of his jurisdiction to give direction to it to make investigation in such matters. It is not the question of prestige or CBI considers it to be derogatory to appear before the Judicial Magistrate. Court is court and where CBI considers that that Court lacks jurisdiction to give such a direction to it then also it should have first taken the decision in the matter therefrom. It is not gainsay that in case Magistrate decides against CBI, it is open to it to challenge that order before the Sessions Court by filing a revision application and reference here may have to the provisions of section 397 of Cr.P.C., 1973. Even if a litigant questions the jurisdiction of the court, it is not advisable directly to come to this Court by way of a petition bypassing efficacious remedy available i.e. to approach to the said Court first and take a decision in the matter. It is not the only remedy but in such matters, litigant may further have a right of revision. So before coming to this Court in such matter, the litigant, herein the Central Bureau of Investigation, had two remedies but for the reasons best known to the officer of the impersonal machinery, it has chosen to directly come to this Court. Litigation in this court heavily costs and it is expected from the officers of the CBI not to unnecessary waste the people's money in litigation.

#. The net result of the aforesaid discussion is that this petition is disposed of in terms that the CBI first to approach to the concerned Judicial Magistrate with its grievance made in this special criminal application and if such an application is filed by the CBI, the learned J.M.F.C. is directed to decide the same within a period of one month from the date of filing thereof after hearing the respondent No.2. In case the decision on the application filed by the petitioner goes adverse to it, it is free to challenge the decision by filing a criminal revision application in the Court of Sessions Judge. Rule accordingly stands disposed of in the terms aforesaid.

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